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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,226	08/01/2001	Kazuyuki Uchida	NAKI-BP60	5849
21611	7590	12/23/2005	EXAMINER	
SNELL & WILMER LLP 600 ANTON BOULEVARD SUITE 1400 COSTA MESA, CA 92626			MITCHELL, JASON D	
			ART UNIT	PAPER NUMBER
			2193	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p align="center">09/920,226</p>	<p>Applicant(s)</p> <p align="center">UCHIDA ET AL.</p>	
	<p>Examiner</p> <p align="center">Jason Mitchell</p>	<p>Art Unit</p> <p align="center">2193</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 7, 11-14 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 11-14 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

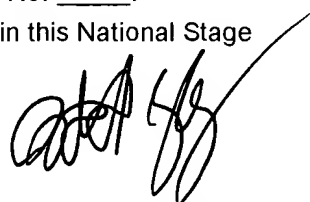
Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



**TODD INGBERG
PRIMARY EXAMINER**

Attachment(s)

- | | |
|--|--|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
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DETAILED ACTION

This action is in response to papers filed 11/18/05

Applicant amended claims 1-2, 6-7, and 11-14, canceled claims 5, 8-10, and 16-17, and added new claims 18-22. Claims 1-4, 6-7, 11-14 and 18-22 are pending in this application.

Response to Arguments

Applicant's arguments on pp. 17-19 with respect to claims 1-4, 8 and 13-14 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments on pp. 19-21 with respect to claims 6-7, 10-12 and 17 have been fully considered but are not persuasive.

In the paragraph bridging pp. 19 and 20 Applicant states:

Claims 6, 11 and 20 have been amended to recite "the piece of resource data received by the resource data receiving means is a resource acquisition script used for acquiring resources necessary for an execution of a corresponding program." Similarly, claim 7, 12 and 21 recite "check script receiving means for receiving the check script sent from the transmitting apparatus in response to the check script request."

The limitations discussed were previously recited in claims 6 and 7, respectively, and are rejected with the same rationale.

In the paragraph bridging pp. 20 and 21 Applicant states:

Sonderegger discloses ... a claiming step 192 claims the resource for the application 23. ... Sonderegger, however does not disclose acquiring resources necessary for an execution of a corresponding program. Therefore, Sonderegger does not disclose "the piece of resource data received by the resource data receiving means is a

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resource acquisition script used for acquiring resources necessary for an execution of a corresponding program.” (emphasis in original)

Examiner respectfully disagrees. Applicant has failed to point out how the language of the claims patentably distinguishes them from the references. Specifically Applicant has failed to point out the distinction between ‘claiming a resource’ and ‘acquiring a resource’. It would seem that both steps involve giving access to a resource to an application (Sonderegger col. 20, lines 26-29 ‘claiming includes capturing a printer port for use by the application 23’).

Claim Objections

The current amendment canceled claim 16, consequently the previous objection to claim 16 is moot.

Claim 19 is objected to because of the following informalities: Line 6 of the claim recites ‘generating receiving apparatus indicates a use state of recourses’. This language is grammatically incorrect. For the purposes of this application Examiner will assume that the limitation was indented to recite ‘generating receiving apparatus information that indicates a use state of resources’ as in claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6-7, 10-12, and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,692,129 to Sonderegger et al. (Sonderegger).

Regarding Claim 6: Sonderegger discloses a transmitting apparatus comprising:

program holding means (col. 2, lines 47-49) for holding one or more programs and identifications thereof; resource data holding means (col. 3, lines 1-2) for holding one or more pieces of resource data which correspond to the one or more programs on a one-to-one basis and each define resources necessary for an execution of a corresponding program (col. 3, lines 1-2); request receiving means for receiving either a resource data request (col. 18, lines 29-33) or a program request (col. 18, lines 51-53) from the receiving apparatus and transmitting means for either reading from the resource data holding means a piece of resource data corresponding to an identification contained in the received resource data request and transmitting the read piece of resource data to the receiving apparatus (col. 18, lines 31-33), or reading from the program holding means a program (col. 3, lines 1-4) corresponding to an identification contained in the received program request, and transmitting the read program to the receiving apparatus (col. 18, lines 51-53). Further Sonderegger discloses a receiving apparatus comprising: first request transmitting means for transmitting to the transmitting apparatus the resource data request (col. 18, lines 29-33) that contains the identification of a download-target program; resource data receiving means (col. 18, lines 31-33) for

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receiving the piece of resource data sent from the transmitting apparatus in response to the resource data request; judging means (col. 21, lines 28-31) for judging from the piece of resource data whether the receiving apparatus can execute the download-target program_by checking an amount of unused resource capability currently available (col. 21, lines 23-26 'determines that the resource has already been claimed'); second request transmitting means for, when the judging means judges that the receiving apparatus can execute the download-target program, transmitting the program request containing the identification of the download-target program (col. 18, lines 51-53); and program receiving means for receiving a program that is sent from the transmitting apparatus (col. 18, lines 51-53) in response to the program request; wherein the one or more pieces of resource data held by the resource data holding means are resource acquisition scripts (col. 14, lines 24-25) used for acquiring resources necessary for executions of corresponding programs, and the judging means judges from a result of a provisional execution of a resource acquisition script (col. 21, lines 28-31) received from the transmitting apparatus whether the receiving apparatus can execute the download-target program.

Regarding Claim 7: Claim 7 is substantially the same as claim 6, and only the differences are addressed here. The omissions are addressed in the rejection of claim 6.

Sonderegger discloses check script holding means (col. 14, lines 24-25) for holding one or more check scripts which correspond to the one or more programs and are each used to check whether the receiving apparatus has either of a device function and an

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embedded-program function that is necessary for an execution (col. 20, lines 22-35) of a corresponding program; request receiving means for receiving a check script request (col. 18, lines 51-53) from the receiving apparatus; and transmitting means for reading from the check script holding means a check script corresponding to an identification contained in the received check script request (col. 14, lines 24-32) and transmitting the read check script to the corresponding receiving apparatus. Further Sonderegger discloses request transmitting means (col. 18, lines 51-53) for transmitting to the transmitting apparatus the check script request that contains the identification of a download-target program; check script receiving means (col. 19, lines 38-43) for receiving the check script sent from the transmitting apparatus in response to the check script request; judging means for judging from a result of an execution of the received check script whether the receiving apparatus can execute the download-target program (col. 21, lines 28-32) .

Regarding Claim 11: Claim 11 recites limitations similar to those of claim 6 and is rejected with the references noted in claim 6.

Regarding Claim 12: Claim 12 recites limitations similar to those of claim 7 and is rejected with the references noted in claim 7.

Regarding Claim 20: Claim 20 recites limitations similar to those of claim 6 and is rejected with the same references and rationale.

Regarding Claim 21: Claim 21 recites limitations similar to those of claim 7 and is rejected with the same references and rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 13-14, 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,594,699 to Sahai et al. (Sahai) in view of 'The Unix Man Pages' further in view of US 6,421,726 to Kenner et al. (Kenner).

Regarding Claim 1: Sahai discloses a download system (col. 2, lines 5-7) including a receiving apparatus (col. 2, line 48) for receiving and executing a program and a transmitting apparatus (col. 2, line 47) for transmitting the program to the receiving apparatus.

Sahai further discloses the receiving apparatus comprising: information generating means for generating receiving apparatus information that indicates a use state of resources held by the receiving apparatus that are necessary for program executions (col. 5, lines 7-14); request transmitting means for transmitting to the transmitting apparatus a download request (col. 5, lines 22-23) which contains an identification of a download-target program (col. 5, line 24) and the generated receiving apparatus information (col. 5, lines 22-23); and program receiving means for receiving a program that is sent from the transmitting apparatus in response to the download request (col. 5, lines 45-46).

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Sahai further discloses the transmitting apparatus comprising: program holding means for holding one or more programs and identifications thereof (col. 6, line 12-19); resource information holding means for holding one or more pieces of resource information (col. 6, lines 17-19) which correspond to the one or more programs on a one-to-one basis and each indicate resources necessary for an execution of a corresponding program; request receiving means for receiving the download request (col. 5, lines 22-26) from the receiving apparatus; and judging means (col. 6 lines 14-16) for judging, from a piece of resource information corresponding to one of the one or more programs with the identification contained in the download request and the receiving apparatus information contained in the download request, whether the receiving apparatus can execute the program with the identification; and program transmitting means (col. 6, lines 22-23) for transmitting to the receiving apparatus the program with the identification when the judging means judges that the receiving apparatus can execute the program,

However, Sahai does not explicitly disclose checking the current status of resources, but does disclose determining the client capabilities using standard system calls (col. 5, lines 7-14 'The capabilities of the client machine 12 are then determined ... using conventional system calls').

The Unix Man Pages teach a standard system call, *top* for determining the current state of client resources (DESCRIPTION 'top provides an ongoing look at processor activity in real time').

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It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the 'top' call taught in The Unix Man Pages as one of the system calls disclosed in Sahai (col. 5, lines 7-14) to determine the current status of required resources. Because one of ordinary skill in the art would have been motivated to ensure that the clients current capacity could handle the download (col. 6, lines 35-38 'Given the CPU processing power ... the server 10 can determine whether the client 12 with be able to cope ... with the media decoding on a timely basis').

Further the Sahai-Unix combination does not teach transmitting a notification when the judging means judges that the receiving apparatus cannot execute the program.

Kenner teaches transmitting to the receiving apparatus a notification that the download is not available when the judging means judges that the receiving apparatus cannot execute the program (col. 16, lines 62-65 'displays a message (step 100) advising the user that the download is not permitted').

It would have further been obvious to a person of ordinary skill in the art at the time of the invention to send a notification as taught in Kenner (col. 16, lines 62-65) to the receiving apparatus (Sahai col. 2, line 48) when it is judged that the receiving apparatus can not accept the download (Sahai col. 6, lines 35-38) in order to notify the user that no download has taken place (Kenner col. 16, lines 62-65 'advising the user that the download is not permitted').

Regarding Claim 2: Claim 2 is substantially the same as claim 1, and only the differences are addressed here. The omissions are addressed in the rejection of claim

1.

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Sahai discloses program holding means (col. 6, lines 14-15) for holding a plurality of programs and identifications thereof, the plurality of programs achieving basically the same function (col. 6, line 19) and requiring resources that satisfy different conditions; and judging means (col. 6, lines 19-20) for judging, from two or more pieces of resource information corresponding to two or more programs that have the identification contained in the download request, among the plurality of programs and the receiving apparatus information contained in the download request, whether the receiving apparatus can execute the two or more programs.

Regarding Claim 3: The rejection of claim 2 is incorporated, further; Sahai discloses when judging that the receiving apparatus can execute any of at least two programs among the two or more programs, the judging means selects one out of the at least two programs (col. 6, lines 17-21), and the program transmitting means transmits the selected program to the receiving apparatus (col. 6, lines 22-23).

Regarding Claim 13: Claim 13 recites limitations similar to claim 1 and is rejected with the references noted in claim 1.

Regarding Claim 14: Claim 14 recites limitations similar to claim 3 and is rejected with the references noted in claim 3.

Regarding Claim 18: Claim 18 recites limitations included in claim 1 and is rejected with the same references and rationale noted in the rejection of claim 1.

Regarding Claim 22: Claim 22 recites limitations similar to those of claim 1 and is rejected with the same references and rationale, except where noted below.

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Sahai does not explicitly disclose checking whether the receiving apparatus can store the one or more programs, but does disclose determining the client capabilities using standard system calls (col. 5, lines 7-14 'The capabilities of the client machine 12 are then determined ... using conventional system calls').

The Unix Man Pages teach a standard system call, *df* for determining the amount of disk space available on the client (DESCRIPTION 'df displays the amount of disk space available on the filesystem').

It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the 'df' call taught in The Unix Man Pages as one of the system calls disclosed in Sahai (col. 5, lines 7-14) to determine if the client has free disk space available to store the programs. Because one of ordinary skill in the art would have been motivated to ensure that the clients current capacity could handle the download (col. 6, lines 35-38 'Given the CPU processing power ... the server 10 can determine whether the client 12 with be able to cope ... with the media decoding on a timely basis').

Claims 4 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,594,699 to Sahai et al. (Sahai) in view of 'The Unix Man Pages' in view of US 6,421,726 to Kenner et al. (Kenner) and further in view of USPN 5,442,791 to Wrabetz et al. (Wrabetz).

Regarding Claim 4: The rejection of claim 2 is incorporated; further, Sahai discloses limitations as described in claim 2 as noted in the rejection of claim 2, but does not disclose the transmitting means transmitting to the receiving apparatus at least two

pieces of characteristic information, or receiving a selection result, or transmitting a program corresponding to the selection result. Further Sahai does not disclose the receiving apparatus comprising selection receiving means for presenting the user the at least two pieces of characteristic information, or allowing the user to select one among the at least two pieces of characteristic information or selection result notifying means. However, Sahai does disclose consulting the user's preferences (col. 4, lines 25-27) but they are included in the initial request, not requested at the time the decision is required. Wrabetz teaches a download system wherein when the judging means judges that the receiving apparatus can execute any of at least two programs among the two or more programs, the program transmitting means transmits to the receiving apparatus at least two pieces of characteristic information (col. 6, lines 21-24) that each indicate characteristics at an execution of a corresponding one of the at least two programs, and receives a selection result (col. 7, lines 58-59) which is sent from the receiving apparatus in response to the at least two pieces characteristic information, and transmits a program corresponding to the selection result (col. 7, lines 51-52) to the receiving apparatus. Wrabetz further teaches the receiving apparatus comprising: selection receiving means for presenting to a user the at least two pieces of characteristic information (col. 6, lines 21-24) received from the program transmitting means, allowing the user to select one among the at least two pieces of characteristic information (col. 6, lines 21-24), and receiving a selection result from the user (col. 7, lines 55-56); and selection result notifying means notifying the transmitting apparatus of the selection result (col. 7, lines 58-59). Wrabetz teaches this in an analogous art for the

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purpose of determining which resources to provide in response to a resource use request (col. 6, lines 21-23).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the method, taught by Wrabetz, of presenting the user with a selection of at least two possible programs (Wrabetz col. 6, lines 21-24), in the download system disclosed in Sahai when there are a number of media assets on the server which meet the requested criteria (Sahai col. 6, lines 17-21).

The modification would have been obvious because one of ordinary skill in the art would have been motivated to receive user preferences with minimum overhead in the initial download request (Sahai col.3, lines 19-23).

Regarding Claim 19: Claim 19 recites limitations similar to claim 4 and is rejected with the same references and rationale noted in the rejection of claim 4.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Mitchell whose telephone number is (571) 272-3728. The examiner can normally be reached on Monday-Thursday and alternate Fridays 7:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason Mitchell
12/20/05



TODD INGBERG
PRIMARY EXAMINER